

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

DEXTER J. RAY,

Petitioner,

v.

ALAN CARTER, Warden,

Respondent.

Civil Action 7:10-CV-35 (HL)

ORDER

The Recommendation (Doc. 13) of United States Magistrate Judge Thomas Q. Langstaff, entered December 15, 2010, is before the Court. Petitioner has filed a written objection to the Recommendation, as permitted by 28 U.S.C. § 636(b)(1).

Judge Langstaff recommends that Respondent's Motion to Dismiss Petition as Untimely (Doc. 7) be granted, and Petitioner's § 2254 petition be dismissed. After *de novo* consideration of the portions of the Recommendation to which objection is made, the Court accepts the Recommendation. The record shows that the petition before the Court is untimely. To the extent Petitioner contends that his untimely filing is excused by the doctrine of equitable tolling, that argument fails. A habeas petitioner seeking equitable tolling of the one-year limitations period bears the burden of establishing (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. Pace v. DiGuglielmo, 544 U.S. 408, 418, 125 S.Ct. 1807 (2005). Petitioner has not met either prong of the equitable tolling test.

The Recommendation (Doc. 13) is adopted and made the order of this Court. Petitioner's objection is overruled. Respondent's Motion to Dismiss Petition as Untimely (Doc. 7) is granted. Petitioner's § 2254 petition is dismissed.

SO ORDERED, this the 20th day of January, 2011.

/s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

mbh